88- 1760

NO. _____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1988

M. THORA WORRELL
Petitioner

v.

B.F. GOODRICH COMPANY
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES SUPREME COURT
FOR THE NINTH CIRCUIT

FINAL CORRECTED COPY

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In propria persona

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QUESTIONS PRESENTED

1. Whether Goodrich's fraud practiced by its attorney, Carr, on the Akron Court was material to its judgment for Goodrich?

2. Whether Worrell made concerted-sincere efforts before 1986, seeking from government "agencies," remedy and/or relief from Goodrich's crimes upon the court?

3. Whether a federal court is time-barred from exercising inherent power to investigate and render relief from a judgment procured by fraud upon the court, by "an officer of the court"?

4. Whether panel judges may reject filed evidence of perfected federal service of process, by substituting California State law provisions?

5. Whether trial and appellate judges may refuse plaintiff a copy of an "Order (for Continuance)" upon which dismissal of her civil action was premised?

6. Whether federal judges and Goodrich counsel may commit criminal conspiracy, denying black petitioner guaranteed fourteenth amendment rights: due process; equal protection; and, "property rights"?

LIST OF THE PARTIES

The parties are :

M. Thora Worrell, Petitioner

BF Goodrich Company, Respondent.

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OCTOBER TERM 1988

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PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE
NINTH CIRCUIT

OPINIONS BELOW

The prior opinions and orders pertinent to this Petition and other matters under review is first the dismissal of petitioner's appeal, December 15, 1988, by C.Judge Skopil, Ninth Circuit Court of Appeals. The panel

affirmance of the San Jose District Court Order granting defendant's motion to dismiss, October 2, 1986, is pertinant to this Petition, as is the Ninth Circuit's "Order," denying petitioner's writ of mandamus to J.

Williams, (N.D.Cal., San Jose), to provide petitioner with a copy of a federal court "Order for Continuance." All "Orders" were denials, and are reproduced in the Appendix to this Petition.

JURISDICTION

The decision of the Ninth Circuit Court of Appeals denying petitioner's appeal, was entered, April 27, 1988; pursuant to pretrial proceedings, from April 7, 1986 until October 2, 1986; the "Order" dismissing her appeal was entered December 15, 1988; and, the "Order" filed, June 11, 1987, denying petitioner's Petition for Writ of Mandamus to district court J. Spencer Willilams to Show Cause Why Plaintiff should be denied a federal court order (for continuance) in her civil action, is pertinant to this case at bar. Jurisdiction of this Court is invoked pursuant to 28 USC Sec. 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions primarily at issue here are F.R.Civ.P., Rule 60(b)(6) saving clause, ... "by an independent action," for relief from judgment (U.S.D.C., N.E.Dist.Ohio (Akron) (Akron Court), for "fraud upon the court," by Goodrich's Akron attorney. Other statutory

provisions relevant to this petition are violations of 18 USC Sec. 1512, considering 1515;F.R.Civ.P., Rules: 4(c)(2)(C)(ii); 12(a), 12(b)(6); 55; 56; 77(c)(d); 79(a); and, petitioner's Fourteenth Amendment guaranteed rights to due process, uninfected proceedings, hearings, and equal protection under the law.

STATEMENT OF THE CASE

This petition arises first, from the Ninth Circuit "Order," by a "single Judge," Skopil, filed, December 15, 1988, (A-1), dismissing petitioner's appeal, (without recitals), and further ordered the clerk to reject any further pleadings from her; second, from the panel Judges' "OPINION," filed, April 27, 1988, which findings are contrary to the statutes on service of process, and on the holdings of all other courts of appeal, and *stare decisis* of most other district courts including its own circuit. This petition arises also from the U.S.D.C., N.Cal., San Jose (S.J. Court), 'Order," filed, October 2, 1986, 1986, "Granting Defendant's Motion to Dismiss," predicated on a nonexistent (i.e., "faked"), "Order for Continuance," purportedly signed by presiding J. Spencer M. Williams, and by which petitioner's civil action was dismissed.

HISTORY - U.S.D.C., N.E.DIST.,Ohio , (Akron Court).

The initial cause of this action in the S.J. Court, began when petitioner filed a Title VII, race-gender discrimination complaint with the Ohio Civil Rights

Commission (OCRC), Arkon, Ohio, February 28, 1977. Four days later, respondent (Goodrich) discharged Worrell from her position as Manager, Public Affairs Research, held since, June 3, 1974. The OCRC's six-month investigation and "Findings," proved Goodrich guilty on all Worrell's Title VII charges of inequitable initial salary offering, and increases, annual performance evalutaions, *et cetera.*, and retaliatory discharge. Empowered by Ohio State law, OCRC ordered Goodrich to re-instate, pay back-salary award ($67,000) and set her equitable salary base at $47,665 per annum, pursuant to percentage of salary increases Goodrich' allocated its white men and women managers.

To thwart re-instatement, Goodrich "abolished" her position purportedly based on a management "report," authored by Booz, Allen & Hamilton, Inc. leaving the OCRC powerless to effect Worrell's reinstatement. Petitioner filed Title VII suit in the Akron Court, May 19, 1978. Goodrich's attorney of record, Norman S., Carr, filed the Booz Allen document as "Def. Exh. 4-V" into the Akron record. Duces tecum subpoena, plaintiff had

served by federal marshal revealed from Booz, Allen that, 'We've never heard of "M. Thora Worrell!'"

Despite a preponderance of Goodrich's corporate documents, identical to those used by the OCRC, Goodrich prevailed, including the Akron court's finding that Worrell had "credibility" deficits. Worrell appealed to the Sixth Circuit. It affirmed. She filed for writ of *certiorari* , August 21, 1981. Examination of the Akron Court docket sheet revealed that the deposition of Worrell's former supervisor, John J. Bell, had been filed into the Akron Court. Concurrently, Worrell wrote to the Clerk, Sixth Circuit, requesting a copy of Carr's certification filed with that deposition. November 2, 1981, *certiorari*, was denied; Worrell reapplied for this copy, November 10, 1981, receiving instead, a copy of the cover sheet of Bell's deposition.

AFTER-DISCOVERED FRAUD - REMEDIES

It revealed that Carr filed this deposition, not in the Akron Court. The Court's stamp read: "FILED NOV 15 10:59 AM '78" UNITED STATES DISTRICT COURT, CLEVELAND OHIO. [S.J. record; App.C-1]. Carr, unknown to Worrell, filed this deposition, three days

pretrial into the Akron Court, via a sister court, in Cleveland, Ohio, fifty miles north of the Akron Court and Carr's office.

This is the first time proof surfaced to prove the method by and the source from which the Akron Court's J. Leroy Contie, Jr. formed the entirety of his judgment - for Goodrich. The evidence in the Akron Court, filed into the record by plaintiff, impeached every false statement in Bell's 92-page deposition, taken October 6, 1978, in San Francisco, six weeks before the Akron trial, November 20, 1978, well after discovery had ended.

From 1981 until 1985, petitioner, still blacklisted, nationwide, after then-250+ attempts to become professionally re-employed since her discharge, March 4, 1977, relentlessly contacted several U.S. Government "agencies," pursuant to the "misprison of felony" and "perjury" statutes, to no avail. Foreclosed from employment, professionally defamed by J. Contie's rulings on petitioner's "credibility," Worrell returned to the law library seeking *other* awful remedies to overturn J. Contie's Judgment, and his unlawful copying into his

judgment, the perjured statements from over thirty (30) pages of this deposition.

CASE AT BAR - San Jose Court: Civ. #86-20233-WAI;SW April, 1985, petitioner discovered "Title 28, USC, Federal Rules of Civil Procedure, Rule 60(b)(6) ... by an independent action," for relief from a judgment procured by "fraud upon the court," by an "officer of the court." By April 1986, petitioner had researched, thoroughly, this Court's holding and derivative decisions incorporating this newly -promulgated amendment, 1948, incorporating this new provision, stemming from that holding.

April 7, 1986, Worrell filed her current complaint, without process, and on May 8, 1986, again, without process, she filed her Amended Complaint; (Am.Comp). She cured this procedural defect, May 27, 1986, having Goodrich's San Francisco attorney, William Gaus, Pillsbury, Madison & Sutro, served, pursuant to federal law by first-class (certified) mail, return receipt request: two executed copies of Form 18-A issued by the S.J. Court; both the complaint and the amended complaint, with executed summons, and a stamped, self-addressed

envelope for return of the Form 18-A acknowledgment, by service of process. Gaus received this, May 29, 1986. (RRR is filed in the S.J. Court.)

Gaus returned one copy of Form-18A, June 13, 1986, received by petitioner, June 14, 1986, which she filed into the record, June 16, 1986. Gaus fulfilled Goodrich's statutory responsibilities and obligations satisfying the federal statutory requirements of service of process.

However, Gaus failed to answer the Am.Comp. within the federal statute time limit : 20 days after the service of process , as commanded by the 20 days stated in the executed summons which he received, May 29, 1986. Petitioner filed for entry of default, June 26, 1986, ten days after the 20-day time limit had expired: June 16, 1986.

The district court clerk refused to perform his ministerial and statutory duty, granting or denying default, by order. Instead petitioner received from the clerk an unsigned, handwritten note on a yellow, 3"x3," "3-M POST-IT STICKER," substituting for a federal court order. The "sticker" read: "Clerk declines to enter default. Date of service was 6/13/86." Petitioner's several oral inquiries, and written letters to the clerk, the last of which

was dated, July 1, 1986, were ignored. She refiled her request for entry of default, July 3, 1986, with her "motion for entry of default," again with appropriate affidavits, including "sum made certain." When no remedy was taken, and her pleadings were ignored, petitioner wrote, July 9, 1986, to both Ch.J. Robert Peckham, and then-presiding Judge, William Ingram. No answers or remedies were fashioned.

Petitioner was left without alternative than to answer Goodrich's Motion to Dismiss, or Alternatively, Motion for Summary Judgment, filed, July 03, 1986, without leave from the S.J. court, without its own motion within the 20 days for an extension of time in which to file a late answer, and without any reason-excuse for its late filing. September 4, 1986, petitioner filed her Answer & Counter-motion for Summary Judgment, supported by her 55-page affidavit and 229+ exhibits proving her complaint charges of "fraud upon the court, and infection of the judicial process" by Carr, an "officer of the court.," by means of perjury, subornation, filing, knowingly, fabricated-forged evidence and a deposition Carr knew to contain perjured statements, into the court record, upon

which J. Contie based his entire judgment. (Petitioner registered this judgment into the Record, May 16, 1986; Civ. No. 86-2009.)

Co-counsel, Kathryn K. Morrison, informed petitioner by letter, September 17, 1986, she had filed an *ex parte* Application for continuance of Worrell's pleadings and evidence. Morrison further stated her application had been granted, and J. Williams had "signed the Order on September 12." Examination of the Record and docket sheet prove no such entry. Petitioner's several oral requests to the clerk, and her numerous written requests to the clerk, to Gaus, and senior law partner, George Sears (Pillsbury), and Ch. J. Peckham, all met with silence, resulting in a denial to plaintiff of a copy of a federal court "Order." Examination of the record proved no such existence of this "Order."

Predicated upon this nonexistent "Order," the S.J. court held a 15-*second* "Hearing," September 25, 1986, (also not entered on the docket sheet), at which time J. Williams presiding (as of July 31, 1986, by order of the Ch. J. Peckham), remarked on "laches," by petitioner in bringing her claims. September 29, 1986, Worrell filed her

affidavit swearing, and proving that she, without benefit of counsel discovered , April , 1985 the statute, "28 USC, FRCP, Rule 60(b)(6)," governing this distinct specie of fraud, governing "fraud upon the court." Petitioner included correspondence, bearing a "1985" certified mail-RRR postmark , which detailed to Fifth Circuit Judge John Minor Wisdom, that petitioner "had just discovered, *by accident*,, this statute...."

October 2, 1986, J. Williams dismissed her complaint, by "Order," [A-10], granting defendant's motion to dismiss," separated from its alternative motion for summary judgment.

NINTH CIRCUIT - Civ. No. 86-2788

Petitioner appealed, October 27, 1986, and on November 24, 1986, filed two petitions for writs of mandamus [Civ. No. 86-7706], to J. Williams: a) to produce for plaintiff a copy of his "Order for Continuance"; and, b) to show cause why default should not be entered against Goodrich, as prayed for in her July 3, 1986, motion, never adjudicated. This petition for writ of mandamus has lain fallow since, November 1986. It has never been adjudicated. Nine months later, Circuit

Judge Anthony Kennedy, authored his June 11, 1987 "Order," [A-] (for J. Anderson and Canby) denying Worrell's petition for a copy of J. Williams' "Order for Continuance ". J. Kennedy based his reasoning and findings on a "panel" review of J. Williams' "Order for Continuance." It does not exist.

Panel J. Skopil, Schroeder and Alarcon denied petitioner's appeal, by setting aside and rejecting the physical evidence of the dates of federal service of process filed into the record: certified mail with return receipt request. The panel, J. Skopil, substituted California State law requirments for process, and filed its affirmance of J. Williams' "Order to Dismiss," which nowhere mentions or addresses, "default," "time to answer am. complaint," "federal vs. state service of process," nor upholds any of this Court's rulings on any of those above-mentioned issues, and the "saving clause" with its special legal considerations and rulings thereon.

Petitioner filed her petition for rehearing, appending copies of both federal and California state law, easily distinguishable to lay persons. May 26, 1988, this petition was again denied, without recitals. All other

pleadings to this circuit, each basing reliance for relief on this Court's seminal holdings, were "denied," without *any* recitals. Worrell moved to have her district court record retrieved from federal archives, shipped, April 7, 1988, before the adjudication of her appeal; the boxes are labeled, "CASE CLOSED, April 7, 1986." Both her motions were denied, without recitals, despite the statutory command that active court records are to be domiciled in the court(s) where the case is active. Petitioner's motion to recall the mandate was likewise "denied," refusing to acknowledge or to follow this Court's seminal rulings on which petitioner relied to move for her prayers for relief. None of these "Orders," addressed petitioner's reliance on this Court's holdings, nor did any of these two-sentence "orders," provided any indication, explanation, or answers to her prayers for relief , held by this Court. In other Orders, J. Skopil's Orders incorrectly and inaccurately captioned the subject matter of appellant's pleadings. The appellate court overruled all this Court's precedents without recitals.

DISMISSAL OF APPEAL

J. Skopil, singly, dismissed petitioner's appeal, December 15, 1988, in answer to her November 28, Motion to Vacate his Orders for want of recitals and failure to be bound by the holdings of this Court. He ordered the clerk to refuse any pleadings from Worrell. Petitioner learned of this Order through the media, despite her two notices to the court of her change of address, requiring her to file a "Declaration of Change of Address." upon which Worrell received a copy of that appeal dismissal within thirty-six hours.

January 14, 1989, petitioner had served on the Ninth Circuit, her "Notice of Appeal to the U.S. Supreme Court for Petition of Writ of Certiorari, to the Ninth Circuit Court of Appeals," to certify from the record those documents, in preparation for tramsmittal to this Court. From January 4, 1989, up to and including March 15, 1989, Worrell's case file record has been unavailable to the public. Upon request, it was said to be "missing," or alternatively, "disappeared," until, March 23, 1989, eight days after petitioner's 90-day deadline to file this petition.

Petitioner received no preparatory instructions from this Court prior to her deadline filing date, 90 days

from December 15, 1988: March 15, 1989, when she filed her petition for writ of cert, and three Appendices, all with spiral binding, presenting evidence in the records of these courts, relevant to petitioner's writ. April 1, 1989, petitioner received the assistant clerk's letter, dated, March 22, 1989, which informed petitioner that her petition for writ of certiorari, and three appendices (of evidentiary documents from the courts' record supporting her declarations in her writ) were being returned to petitioner (seven boxes). for want of other bindery, and typeface. Petitioner received these returned items, April 1, 1989.

The Court granted leave to resubmit her petition. She is relying, therfore, on the transmission of the designated record from the office of the clerk for the ninth circuit court of appeals in support of petitioner's statements herewith presented in this writ of certiorari to this court within twenty-one days: Saturday, April 22, 1989.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

There can be no more chilling reality for this Court than that on review of this civil record, acknowledgment must follow that the Opinion, and the S.J. Court "Order Granting Goodrich's Motion to Dismiss," both have been procured by fraud upon these courts, and by criminal conspiracy by Goodrich's Pillsbury attorneys, Gaus and Morrison, with presiding J. Spencer Williams, to conspire to commit and conceal obstruction of justice, with the full knowledge of the Chief Judges of both the district and the appellate courts: Robert Peckham , William Ingram, and Ch. J. Browning and Goodwin. They were able to conceal that criminal activity by then-Circuit J. Anthony Kennedy's role in his June 11, 1987, "Order," denying Worrell's petition for writ of mandamus to J. Williams to show cause why his "Order for Continuance," should be withheld, contrary to criminal statutes, from plaintiff, and upon which the dismissal of her civil action was premised.

Even more chilling is the reality that no longer can anyone guarantee that published opinions, and or, "orders," authored by any of the judges involved in this case, are reflective of true legal facts before them. Despite the recorded fact that this Court has held consistently where "fraud" has been practiced upon a court, it has the inherent right to investigate the circumstances and to grant relief from such a judgment so procured. In this case at bar, J. Kennedy, and his good friend and former law partner, J. Williams, with Goodrich's attorneys, failed and refused to comport with the law, the standards of judicial integrity and principles inherent in the legal requirements of their oath of office as it is written in the Constitution and since upheld repeatedly by this Court. Having placed themselves above the law and above this Court's rulings on those laws, they committed crimes, intolerable in a civilized, and therefore, democratic society. These "officers of the court" have been protected by each other against the consequences of such malfeasance -- thus far.,,

This Court, in its seminal case on "fraud upon the court," *Hazel Atlas Glass Co. v. Hartford Empire Glass Co.*, 322 U.S. 238 ,246 (1944), held that fraud "is a wrong

against the public institutions set up to protect and safeguard the public...and cannot complacently be tolerated consistently with the good order of society."

This Court has the inherent power to investigate whether the Akron Court judgment, (1979) from which followed all subsequent, and fraudulent, judgments here presented in this twelve-year-long litigation, was tainted by Goodrich and its attorney, Norman S. Carr, when he knowingly infected the judicial process, by filing into that record, the fabricated and forged "report" ostensibly authored by Booz Allen, foreclosing petitioner from re-instatement and future re-employment. And further, when Carr knowingly, clandestinely, and unlawfully filed three days before trial, Bell's deposition he knew to contain perjured statements, into Akron's sister court, 50 miles north of the Akron court, with neither certification nor notification to plaintiff. That deposition found its way to J. Contie by interoffice mail. Thirty pages of perjured statements, all impeached by evidence even in Bell's own hand, in the Akron Court record, were excerpted by J. Contie for his judgment. [A-16].

Resolution of *Hazel Atlas*, begun initially by Hazel's challenge to the true authorship of the "Clarke Article," ostensibly written by the Glass Bottler's Association, representative, Clarke, but which was written instead by Hartford's counsel, Hatch, expended eighteen years, including two years even before the initial civil action, 1928. This Court's seminal ruling devitalizing the Third Circuit's ruling for Hartford, procured by Hartford's foisting that Clark Article on that court, prompted the Congress to amend Rule 60 to include the "saving clause," 60(b)(6)'s independent action," where "officers of the court"commit that fraud.

It is upon this "saving clause" Worrell filed her complaint, charging Goodrich, through attorney Carr,with infecting the judicial process by practising a fraud upon the court. To effect the consistent victories Goodrich has procured, both its Akron and San Francisco attorneys had to have had the consent, assistance and cooperation of federal judges to effect an almost-perfect criminal conspiracy to commit and to conceal, for eleven years, obstruction of justice; *Root Refining Co., v. Universal Oil Products, 169 F.2d 574* (CA3, 1948). Associate Justice

Anthony Kennedy's June 11, 1987 "Order," denying petitioner a federally mandated right to receive a copy of any-all court documents, violates criminal statutes. Posturing that his order is predicated upon his review of that order is false, and gives pretense that an "order" exists from which such a "judicial finding" is predicated upon "legal facts ."

NO ORDER EXISTS. NOR IS THERE AN "ENTRY" ON THE DOCKET SHEET, of either the order or of the Hearing, upon which Goodrich's Motion to Dismiss was effectively separated from its Motion for Summary Judgment, contrary to statutes where the legal facts at bar foreclose such separation governing automatic conversion.

Point One: Materiality of Fraud on Akron Judgment.

An objective review by this Court of that Akron* court judgment, juxtaposed (over 32 pages, with reference to Worrell's documented evidence proving the perjury), to the Bell deposition [S.J. Record, App. C-1], on its face, proves J. Contie literally copied Bell's false statements. From this perjury, he formed his false "findings of fact," which he converted to his fraudulent "conclusions of law." Was there proof Bell's statements were perjured? Plaintiff filed over 100 corporate documents, used by the OCRC, which disproved every one of Bell's statements, and substantiated all Worrell's charges, identical to her OCRC complaint. Was Bell under oath? Yes.

Unlike the Third Circuit, which rested its denial of relief to *Hazel* upon the conclusion that the "Clarke article" that it was not "basic" to the court's 1932 decision, at 246, Carr, in "Defendant's Motion to Dismiss,

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*[A-I], "Petition for Writ of Certiorari..., to the Ninth Circuit Court of Appeals , Appendix II, pp 119-157."

Carr, in "defendant's Motion to Dismiss" Worrell's appeal, [S.J. record, App. C-2], insisted, and emphasized to the Sixth Circuit, the "*obvious relevance* to the trial court, Bell's *sworn testimony* (had) and cannot simply be wished out of existence by Appellant."

False Evidence Becomes Entirety of Akron Judgment

Relying on Bell's perjured statements, J. Contie found Worrell incompetent in her professional obligations, during Goodrich's vinyl chloride crisis." However, that "crisis" occured in 1973 -- eight (8) months before Worrell's June 3, 1974 date of hire --which the court noted; Several interview sheets, and pre-employment correspondence filed into the S.J. record proved petitioner lived in a foreign country during this "crisis," corroborating Worrell's charges that Goodrich's fraud upon the court was all-embracing. Bell's own documents, impeach his "sworn (deposition) testimony." Worrell presented a comparative presentation in her 55-pp affidavit, filed, September 4, 1986, in the S.J. Record as "Plaintiff's Affidavit in Support of her Answer and Counter-motion for Summary Judgment," briefly excerpted here*in lieu of petitioner's former submission

in her March 15, 1989, presentation to this Court, of J. Contie's judgment and the perjured statements he excerpted from thirty pages of Bell's deposition. Carr was the determinant provider of this fraudulent vehicle. Petitioner amply proved her complaint charges in the S.J. court record, even if default judgment were not appropriate in other legal circumstances. Carr's evalutation that the weight of the deposition, "materiality," had "obvious relevance," could not be more accurate. Worrell filed a copy of this judgment, [S.J. record, App. A-11], with Bell's perjured statements used by J. Contie, removed. Left was a skeleton of verifiable facts from Worrell's *prima facie* evidence: alternately referred to as "voluminous documents," *infra*, at . Had Bell's deposition not be filed by Carr, the true facts in the Akron court record, would have precluded and foreclosed Goodrich from prevailing, just as defendant Goodrich was found guilty by the OCRC nine-member panel, December 12, 1977. Such materiality, once proven, is necessarily a basis for devitalizing a judgment. In *Hazel*, at 247, this Court held that despite the Third Circuit opinion which denied *Hazel* relief, concluding that the

Clarke article was not "basic" to the court's 1932 decision, this Court reversed, holding that, "[T]hey urged the article upon the Circuit Court and prevailed. They are in no position now to dispute its effectiveness." Here we have, first, not only Carr's clandestine filing of this deposition, andJ. Contie's copying the perjured statements, obvious from proof in the record, but we have a reviewing court, J. Williams, where the Akron Court judgment is registered pursuant to 28 USC Sec. 1963, not only refusing evidence proving Worrell's complaint charges of Goodrich's and Carr's "fraud upon the court," and their effective attempts to subvert the integrity of the court itself, but suppressing evidence - for "continuance" -- of this fraud, *infra*, at "Point Two," prohibited by statutes and this Court's seminal ruling in *Hazel*, upon which principles Worrell's complaint is basically reliant. This Court held, at 247:

> Hartford's officials and lawyers thought the article material. They conceived it in an effort to persuade a hostile Patent to grant their patent application.... *They are in no position now to dispute its ef-fectiveness. Neither should they now be per-mitted to escape the consequences of Hart-ford's* deceptive attribution of authorship to Clark

> on the ground that what the article stated was true. (Emphasis added.)

This Court's holdings had no legal significance to the Akron Court, nor to Goodrich, and its counsel. For all of the above-stated reasons, supported in the records of these courts above-named, this petition for writ of certiorari should issue.

POINT TWO: Whether petitioner made concerted-sincere effort, prior to April 1986, to bring to the attention of federal "agencies," the crimes committed upon the court?

The S.J. Court Order [A-], found, "Rule 60(b) requires that such motions be made 'within a reasonable time.'" (Quotation unattributed.) This ruling conflicts with this Court's seminal holding, *Hazel*, on the issue of "fraud," when practiced upon a court(s) by an "officer of the court": an attorney and or a judge.

Statutory Distinctions Between 60(b)(6) & 60(b)(3).

First, petitioner filed a Rule 60(b)(6) "independent action" (complaint), sharply distinguished from the "motion" provision of the statute , Rule 60(b)(3) one-year limitation. Rule 60(b)(6) Amendment promulgated, 1948, known as the "saving clause,"was a direct result of this Court's *Hazel* decision, for the specific purpose of affording legal remedy for legal circumstances not found in subsections (1) through (5); [A-]. This Court held in Hazel, 244-245, that

[T]here is no time bar for 'fraud upon the court...Every element of the fraud here disclosed demands

the exercise of the *historic* power of equity to set aside fradulently begotten judgments." (Emphasis added.)

This Court's historic holding in *Hazel*, 246[2], that "fraud perpetrated upon the court," is a "wrong against the institutions set up to safeguard the public,...the public welfare demands that the *agencies* of public justice be

not so impotent that they must always be mute and helpless victims of deception and fraud"; concurring, 7 *Moore's Fed. Prac.*, 60.33 (2d ed. 1983). That Hazel may have appeared not to have "exercise(d) the highest degree of diligence, Hartford's fraud (could not have been) condoned for that reason alone." *Id.* The injury is to the public weal.

"Fraud upon the Court," and *res judicata*

Having before him, Worrell's reliance on the 60(b)(6) statute, this Court's principles clearly set out in *Hazel* which legal circumstances distinguish "fraud upon the court," from those which are subject to the 60(b)(3) sanctions, *Id.*, 247-248, we move to J. Williams' erroneous interpretation of this seminal case: "Plaintiff has already raised the issue of fraud in her appeal to the Sixth Circuit.

Thus, the issue has already been litigated, and is barred by the doctrine of *res judicata."*

First, there is no factual or documented evidence in the record of either the Sixth Circuit or the Akron court to verify and or support such a "finding," or "conclusion of law." No "new" issue may be raised on appeal. J. Williams had neither record before him. Goorich, pleading *res judicata* defense, motioned neither for a Rule 12(e) more definite statement, nor for transfer of the Akron court record to prove "the same issues" were litigated. J. Williams refused to adjudicate Worrell's September 4, 1986 motion to have the Akron court record transferred to verify the issue of "fraud upon the court" had not been litigated before.

Second, the specie of fraud herein committed is distinguishable from subsection (3) which treats of perjury, subornation, and fraud, generally . This Court's standard of classification is that it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decisions. These schemes must have been committed by an "officer of the court," which meets the "egregious misconduct,"

standard; *Rozier v. Ford Motor Co.*, 573 F2d 1338[1,2] (CA5, 1978).

No dearth of factual, documented evidence appears in the case at bar. Bell's deposition juxtaposed to J. Contie's judgment is conclusive evidence of its materiality. Examination of Bell's false statements and documents in his own hand, filed into the S.J. record, prove his perjury. Examination of the Akron court record, would have proven Carr filed no certification into that record for his filing the Bell deposition, nor did he file any notification to plaintiff.

AFTER-DISCOVERED FRAUD

Third, J. Williams' ruling conflicts with the binding precedent on what constitutes "highest degree of diligence." Before J. Williams, was bonafide, documented proof that on November 24, 1981, Worrell received from the Sixth Circuit clerk, a copy of the front page of Bell's deposition, in lieu of her August 21, 1981, and November 10, 1981, follow-up letter requesting a copy of Carr's "certification" of Bell's deposition filed into the Akron Court record, listed as "Item 15." That entry does not reveal "where" it was filed initially. This front page read:

'FILED NOV 15 10:59 AM '78 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO CLEVELAND." For the first time petitioner discovered the indisputable proof of this unsconscionable scheme hatched by Goodrich and Carr. With trial only weeks away, and Goodrich without evidence to rebut Worrell's *prima facie* evidence of gross race-gender discrimination, this deposition was scheduled for October 6, 1978, in San Francisco, California, long after the close of "discovery."

Three days pretrial, Wednesday, November 15, 1989, Carr filed this document in the sister court, Cleveland, Ohio, fifty miles away from the Akron court and Carr's office. Trial began, Monday, November 20, 1978, 0900 hours. The impact of that deposition bought Goodrich a victory judgment: J. Contie excerpted, p arphrased, and directly quoted over thirty pages from Bell's false statements.

Such an odious scheme fits comfortably within this Court's standards for devitalization of that judgment where it differentiates between,

> [This is] not simply a case of a judgment obtained

> with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury.... Here, even if we consider nothing but Hasrtford's sworn admissions, we find a deliberately planned and carefully executed scheme to defraud not only the Patent Office (Akron Court), but the Circuit Court of Appeals (Sixth Circuit)."

Moreover, this Court, *Hazel*, 246, supports the required "degree of diligence" standard required of a litigant to qualify for relief of a judgment so procured. The record proves petitioner relentlessly pursued remedy, not knowing, until 1985, (proven in the Record), and having been foreclosed from employment which provides for legal counsel, of this obscure "saving clause." Notwithstanding, this Court holds that the "foisting" of a fraudulent document upon the court constitutes "fraud upon the court"; *Hazel*, 247. To support petitioner's 60(b)(6) independent action qualification, this Court has ruled, that where "fraud has been perpetrated upon a court," such a bribery of a judge or the fabrication of evidence by a party in which an attorney is implicated, there is no time bar for seeking or granting relief. For such a judgment is void. The Third Circuit's denial to

Hazel on the ground that it failed the "diligence" test, was overturned by this Court.

J. Williams' judicial castration of petitioner's "voluminous evidence" not only prove her complaint charges, that evidence also corroborates that the Booz Allen document is fraudulent and foreclosed Worrell from re-instatement and re-employment when it was used in the Akron judgment that Goodrich could dismiss Worrell for cause shown; [A-].

Feigned Existence of Federal Court "Order."

So critical is this "voluminous" evidence, J. Williams had it "continued," by conspiring with Goodrich's attorney, Morrison, to inform petitioner that such an "order" existed, and was "signed," when no such "order" exists: a feigned (i.e.,"faked") federal court "order." And, so revealing is this "voluminous" evidence, it was shipped from the district court, to federal archives, April 7, 1988, before the appeal was rendered, lest some outside source review the litany of criminal acts committed not only by Goodrich's lawyers, but by the judges themselves, in this cause of action.

Therefore, such criminal conspiracy to defraud the mandates and principles of the Constitution, the statutes, the courts, and this petitioner's basic rights, warrant a full review and remedy by this Court. This writ should issue.

POINT THREE: IS THE COURT TIME-BARRED FROM GRANTING RELIEF?

In *Hazel*, 244, this Court has held that the term rule of equity "after-discovered fraud," qualifies for relief from judgments regardless of the term of their entry...." It is apparent on the face of this record that J. Williams' refusal to follow federal statutes as they are intended and promulgated by The Coongress and applied consistently in other federal circuits, demands intervention and remedy here.

Where it is self-evident, as it is in these records, that these laws have been rebuked by the federal bench, in consort with other "officers of the court," Gaus & Morrison, these circumstances fit quite comfortably within this court's confines of "extraordinary circumstances," in the sense that a "a reasonable man on the street," *Berger v. U.S.*, 255 U.S. 22, 30 (1920), would

easily comprehend and quickly agree that writing federal court "orders" on yellow "3-M Post-It Stickers," faking federal court orders, and denying plaintiff a copy of any court document or order, constitute criminal acts. Fabricating documents, forging authorship and filing them, and the perjured statements in depositions, into the court record, (even without the clandestine act and felonious intent of filing said false evidence in a sister court fifty miles away from the court to dupe the opposing party), to this "reasonable person," would constitute "extraordinary circumstances."

And further, before J. Williams, were filed, [S.J. record; [App."Y"], the "co-incidental" harassments to petitioner and her children, which included her children: being shot at with sawed-off shotgun on his way home from school, where he was attacked by youths in KKK outfits, where her daughter was the intended victim of contrived embezzlement of bank funds, where their home was emblazoned with racial epithets, interference with bank accounts, including their being "frozen" for no legal reason, to list only a few never-before-experienced harassments, prompting petitioner to move 3000 miles to

escape these unprovoked "anonymous" difficulties, only to find their continuance here in California, and requiring petitioner to file several reports of these incidents with the FBI. To any "reasonable person," these are "extraordinary circumstances."

Petitioner notes and concurs with the "sanctity of finality," of judgments, which does not transfer, logically or lawfully, to the "sanctity of *lawlessness*," as herein presented. J. Williams' findings in his October 2, 1986 Order granting Goodrich's Motion to Dismiss is in direct conflict with this Court; held in, *Cahill v. New York, New Haven & Hartford Rlrd. Co.*, 351 U.S. 182, 198 (1955), that "the interests of justice" are paramount, even for "out-of-time petitions for rehearing." Again, and again, in *Union Trust Co. v. Eastern Airlines*, 350 U. S. 304, 306 (1948), this Court is definitive in the meaning of its ruling, quoting *Hazel Atlas:* "The power to act on its mandate after the term expires survives to protect the integrity of the court's own process...."

The Judiciary's Refusal to Remedy Obstruction of Justice.

Then-Ch.J. Browning and successor, J. Goodwin are apprised of the criminal conspiracy to commit and conceal obstruction of justice present in this cause of action. They were apprised of the faked federal court order by J. Williams; and commitently, refused to remedy what they have inherent power to remedy, as this Court repeatedly has held. Nowhere has petitioner been held "in contempt of court," nor been sanctioned, nor beenordered to cease and desist in her clear-language charges of criminal conspiracy by federal judges, Goodrich and its San Francisco attorneys, in this cause of action.

This Court holds unequivocally, that "time" is not the criterion on which "relief" from a judgment , or the recall of the mandate is premised, where the "interests of justice," are paramount. Consistently, definitively and categorically, that where a fraud has been committed upon a court, "not only does a (any) court have the 'inherent power' to investigate whether a judgment was obtained by fraud, (that power) is beyond question"; *Root Refining Co. v. Universal Oil Co.*, 169 F.2d 518, [2] (CA3, 1948), quoting *Hazel Atlas*.

Because the San Jose court is not authorized to narrow or to ignore the statutes, and the binding precedents of the United States Supreme Court, and the judiciary have failed and refused to act on their "inherent power" to devitalize the Akron Court judgment, registered in the San Jose court, pursuant to 28 USC Sec. 1963, and further have committed obstruction of justice to thwart said devitalization of that judgment, this writ should be granted.

POINT FOUR: MAY JUDGES SET ASIDE EVIDENCE IN THE RECORD & REPLACE THE LEGAL FACTS WITH ANOTHER LAW?

This court has repeatedly held that courts must give effect to the plain-language meaning of statutory language; *Griffen v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570 (1980). Courts, may not, under the guise of statutory interpretation, insert words or phrases into statutory language that alter the statutes' meaning; *U.S. v. Temple*, 105 U.S. 97, 98 (1881).

Given that long consistent history of this Court's holdings, petitioner presents this question to this Court, whether the ninth circuit panel, Judges, Skopil, Schroeder,

and Alarcon, are empowered to alter the plain-language meaning of HR 7154, Pub. L. 97-462, January 12, 1983, Federal Rules of Civil Procedure Amendments Act of 1982, 28 USC 2071; i.e., F.R.Civ.P., Rule 4(c)(2)(C)(ii)?[A-]., and instead, apply California Code of Civil Proc., Secs. 415.30(b), 415.30(c). [A-].

Federal Service of Process.

The "Statement of the Case," as herein presented, relates the legal facts substantiated in this record: that petitioner had Goodrich served pursuant to this federal law, F.R.CivP., Rule 4(c)(2)(C)(ii), May 27, 1986. All its statutory requirements regarding "time" were met by both parties. Goodrich's attorney, Gaus, received process, May 29, 1986, by Certified Mail (CM), verifiable from the Return Receipt Requested (RRR), filed into that record. He returned, June 13, 1986, one of the two copies of the executed "Form 18-A" in the stamped, self-addressed envelope petitioner mailed to him, May 27, 1986, with her complaint and amended complaint, executed summons dated, May 27, 1986, by the clerk. Petitioner filed the executed summons into the S.J. record, June 9, 1986, and

filed Gaus' executed Form 18-A, June 16, 1986: 20 days after service of process.

Federal "Answering Time."

F.R.Civ.P., Rule 12(a) requires defendant to *answer* the Am.Comp. in 20 days from *date of service.*: May 27, 1986; i.e., June 16, 1986. This lawful compliance is clearly worded in not only the "Rule" itself. It is clearly worded in 28 U.S.C. Rules of Civil Procedure, "Commentary: **C4-10. Answering Time.** One the things the summons has to do is require the defendant 'to appear and defend' within the time that 'these rules' provide. **The required time period can be found in Rule 12(a).** In general, **the period is 20 days for all defendants** except the United States or a federal officer of agency, where it is 60 days. **The summons should recite whichever period is applicable."**

Did petitioner's executed summons state the number of days? Yes. Is Goodrich (a corporation) registered in the State of California? Yes. Venue, personam and subject jurisdiction requirements are met, to qualify for service of process, pursuant to Rule 4(c)(2)(C)(ii).

The opinion presents authorities inapposite to the holdings of every other appellate court, and the majority of district courts, on the function of the "executed summons," in federal civil action, and the legal facts in the record and as herein presented. The court presents, [A-5], that "Worrell contends that Rule 12(a)'s **twenty-day response period begins on the date of receipt of the complaint and summons by counsel.**" Worrell made no such "contention," and is a distortion of not only the legal facts of her service of process, but a distorted presentation of the command of the executed summons. Nor does the appeal court address "Rule 12(a)," and the clear-language meaning therein. Appellant's Brief, p.15,9-15, clearly states: "Appellee filed no motion on any matter between, service of process upon him, May 27, 1986 and June 16, 1986: **20 (twenty) days from the date of said service of process, ... excluding tolling "the day of the act" Rule 6(a),** and pursuant to Loc. Rule 120-4 of the district court, vs Rule 6(e)." Moreover, the executed **summons governs "answering time": 20 or 60 days,** not 40 days; i.e., 20 to acknowledge the Form 18-A, and an additional 20 days to answer the complaint. The summons is unequivocal in

its mandate, and readily understandable to lay people who receive them, and to legal practitioners, including court personnel.

Each of the panel's authorities are easily proven inapposite, not only with the statutes, and this Court's rulings on "default," for failure to appear, and to answer, within 20 days, from the date of the executed summons, but even with decisions of their own circuit , *infra*.

In *Armco Inc., v. Penrod-Stauffer Bldg. Sys. Inc.*,,defendant failed to acknowledge service of process, required under Rule 4(c)(2)(C)(ii). In Worrell, Gaus, served process May 27, 1986, returned the Form 18-A, timely; June 14, 1986.. twenty days after service of process.

Coldwell Banker & Co. v. Eyde; is likewise inapposite. Service is ineffective under this Rule where it was received but not timely acknowledged. Gaus received process, May 29, 1986, and timely acknowledged and returned it to petitioner.

Combs v. Nick Grain Trucking; defendant did not return acknowledgment timely. Again, inapplicable to the instant case. *Green v. Humphrey Elevator & Truck Co.*, plaintiff failed to serve defendant with personal

service within 120 days, when defendant failed to return signed notice of acknowledgment. Petitioner served defendant within the Rule 4(j) time limit.; And again in *Guth v. Anderson;* plaintiff failed to effect service within 120 days, served defendant Green by 3rd-class mail, without Form 18-A, or stamped, self-addressed envelope: Therefore, there was no service of process, and no acknowledgement violating said Rule 4(c)(2)(C)(ii). There can be no semblance of comparison in this "authority," applied to the legal circumstances in the case at bar.

Similarly, in *Madden v. Cleland,* the panel, J. Skopil, presented this set of legal facts as though they have some relevance to the case at bar. Here, plaintiff's service by mail was defective where plaintiff's attorney enclosed the wrong form: "civil process return," used for personal service by a process server! No Form 18-A was enclosed, which is totally irrelevant to this case. In *Morse v. Elmira Country Club,* a diversity jurisdiction case, already inapposite to *Worrell,* ruled categorically on the distinctions between the California C.C. re: tolling of time to answer complaint, controlled by the summons: the day

of **tolling begins** immediately when the summons is executed, **"save the day of the act."**

Red Elk v. Stotts, used Rule 4(c)(2)(C)(ii) mail service on counties. This rule is inappropriate for those agencies. Moreover, the defendant was outside the 120 day limit and the complaint was dismissed. None of these legal facts are even similar to this case at bar.

Rust v. City of Kansas City, Kansas, the district court held service of process effeective on the date of signed acknowledgment is made within requisite 20 days of mailing of process, which may apply to Kansas state law, since the defendant is a "city," not a corporation, as is Goodrich. Moreover, **"state law," of any state, is of no impact on the federal rule in point in this case at bar.** For the panel to use Rust as definitive proof that the "twenty-day response period measured from date of acknowledgment of mailed service," applies in this case, is irresponsible, given that Rule 4, provisions for a **"state or municipal corporation or other govermental organization..." must be served, pursuant to Rule 4(d)(6).** Therefore, affirmance of the S.J. "Order," dismissing

petitoner's action is clearly erroneous and an abuse of judicial power.

Scarton v. Charles, involves the state long-arm statute, where jurisdiction over the defendant is necessary. No such statutory challenges are applicable here. Also the failure of defendant to acknowledge receipt of complaint prompted the court to endorse *Morse,* which holds that where a defendant deliberately refuses to acknowledge service of process upon him, he is deemed "served." The is no such relevance of the facts in Morse, to this case at bar. *Southern Pride, Inc. v. Turbo Tek Enterprises, Inc.,* involves "out-of-state" defendant, and a venue issue,another statute, and not 4(c)(2)(C)(ii). Goodrich is registered in this State and is subject to federal jurisdiction. Petitioner fails to see how this "authority" is applicable here.

California State Law - Service of Process.

The California **State Law** on service of process is one of the four options provided under HR 7154: Rule 4(c)(2)(C)(i); service by the laws of the State. The meanings of, and the legal requirements between the two statutes for both plaintiff and defendant, are opposite.

Congress intended to fashion Rule 4(c)(2)(C)(ii) to be **"similar.,"** and **optional** but **not** "identical" to the California law; *Morse,* 40-41; section 415.30, where "summons is deemed served on the date of execution of an acknowledgment of receipt of summons." Federal law, as **petitioner's choice** of service of process, demands that that defendant's answer "is also" due in "twenty days," as Rule 12(a) demands, as does the executed summons, *supra* . The confines and demands of Rule 4(c)(2)(C)(ii) are overemphasized tediously, herein, to exhibit how unrelated the authorities of the ninth circuit panel are to the "facts" as expressed in language clear even to a lay person. No number of inapposite authorities, applicable in other legal circumstances, can change the legal facts in this record. Petitioner had the legal option to serve process by one of four methods. She selected 4(c)(2)(C)(ii). She perfected it. Gaus met all the legal requirements of said process, which should tidy this misapprehension for the panel on "service of process." It is not a legal issue. **The legal issue is "answering time." Nowhere has Rule 12(a) or Rule 55 been repealed.** Noticeably, J. Skopil neither addresses the clear-language meaning of either

Rule 12, or the executed summons before him in this case at bar. Instead, the court labored on facts which have absolutely no application to the facts here. If there were any error/errors in her Statement of the Facts, or her authorities including those of this Court, clearly spelled out in the most elementary of form, the court failed to address it/them. Moreover, nowhere in those citations, do they address the issue of perfected mail service, from which a default judgment **might** follow. All J. Skopil's authorities address mail service **defects.**

In this case at bar, all statutory requirements for service of process were met, by both parties.

Moreover, the court's findings that the clerk "refused" to enter default judgments, is challengeable, legally, since the court has no such Order before it - again - required by F.R.C.P., Rule 77(c)(d), 79(a), upon which the panel can come to that "legal" finding. Petitioner has the "3-M Post-It Sticker," on which was handwritten: "Clerk declines to enter default. Service was 6/13/86." The S.J. Record has a photocopy of that sticker. If default, lawfully, should not have been granted, why did not the clerk

merely fill in petitioner's blank "Order," (submitted with all pleadings), with that "denial" and mail it to her as the federal rules mandate?

In other cases before the trial courts, in San Francisco, and periodically, in the S.J. court, the statutes are followed. Here, in the following rulings, we see that the ninth circuit follows the statuutes and this Court's rulings without challenge: *Benny v. Pipes*, 799 F.2d 489 (CA9, 1986), where prison guards, duly served with process, were "culpable, for their failure to answer." Again, in *In re Consolidated*, 1285-86, Judge Zirpoli, relied on *Thomson*, that where a defendant who does not appear, or answer in the time allowed, shall have his action adjudicated 'in regular course,' of his action." From these examples, one discerns that this Court's rulings in *Thomson* , and its doctrines of *nil dicit*, p. 110, and *pro confesso* are still viable in the ninth circuit, as is default judgment; *Benny*.

The refusal of the ninth ciruit panel to implement the law for petitioner, as it rightly applies to the legal facts in this case at bar, is a denial of equal protection under the law. Therefore, this writ should be granted.

POINT FIVE: Whether the S.J. Court & the Ninth Circuit May Deny Plaintiff Copy of Federal Court Order which Premised Dismial of her Action?

It is well-g rounded in statute, and by the Constitution that "any one" who deliberately denies and or refuses to provide a party with a federal court document, or order, in her action, is guilty of tampering with the administration of justice and or is guilty of obstruction of justice: 18 USC Secs. 1512(a)(2)(A), as defined in Sec. 1515(3)(A)(B)(C)(E), denies party the guaranteed right to equal protection under the laws, and substantive and procedural due process.

Silent Record - No "Order for Continuance."

The docket sheet and the record are silent on the existence of the "Order for Continuance," purportedly "signed by J. Williams, on September 12,"1986 - Kathryn K. Morrison, of counsel; [S.J. record, filed, September 29, 1986.] Worrell's Petition for Writ of Mandamus, (Order for Continuance), filed, November 24, 1986, was denied by panel J. Kennedy (author); Anderson and Canby, June 11, 1987; [A-].

Judicial Conspiracy - **Concealment of Obstruction of Justice.**

The "Order for Continuance," does not exist. Therfore, J. Kennedy, falsified the legal fact that no such "order" exists; he could not have "reviewed" it to come to any *legal* conclusions. Nor could J. Kennedy make any legal determinations whether or not plaintiff was "prejudiced." Nor could J. Kennedy verify any such "entry"on the docket sheet; The filing of a document into a court record, knowing the contents to be false, is a crime.

Petitioner's writ of mandamus to J. Williams to show cause why plaintiff was denied a copy of his "Order," pointedly laid out the facts in her "Statement of the Case": the clerk's substituting "3-M Post-It Stickers" for federal court orders, plaintiff's repeated requests, oral and written, even to the Ch. J. Peckham, to the Clerk, and to Gaus and Sears, both of Pillsbury, all by service of process. And did petitioner pointedly suggest that denial of a court "Order" to a party in a civil action was classified as a crime? Yes. That such acts are felonies in of itself deterred no one of these "officers of the court." J. Kennedy **knew** Goodrich was in default, and he **knew**

petitioner had filed "matters other than the pleadings" which converts a motion to dismiss to a motion for summary judgment. J. Kennedy also **knew** that Goodrich could not prevail in this case at bar, because petitioner's documented evidence, J. Williams calls "voluminous documents," do indeed prove her complaint charges: perjury; subornation; fabricated-forged documents and authorship; knowingly filing a deposition of perjured statements into the record via a fifty-mile round trip, unknown to a **black** plaintiff, at the time of her Akron trial. And lastly, then-circuit Judge, Anthony Kennedy, **knew** his good friend and former law partner, J. Spencer Williams had feigned, "faked," the existence of that "Order for Continuance," to prevent petitioner from prevailing, rightly, honestly, and lawfully in this case at bar. In essence and in fact, J. Kennedy knowingly participated in a criminal conspiracy to violate the laws of the United States, and to violate the laws which guarantee petitioner of an "uninfected" trial-proceedings.

This writ should be granted.

POINT SIX: Whether this Court will Permit Criminal Conspirracy & Denial of Petitioner's

Constitutional Right to Protection Under the Law?

"Tampering with the administration of justice indisputably shown here involves far more than an injury to a single litigant" *Hazel,* p.246.

One is hard-pressed to find, in the annuals of American Jurisprudence or in the Common Law, any case which involves such a deliberate, concerted, and collective effort by so many federal judges to violate the laws, and to violate their oath of office, to conspire to obstruct and to conceal obstruction of justice, to prevent a Black plaintiff from receivcing her lawful right to due process, uninfected proceedings, and from receiving equal protection under the laws of this country. The closest applicable precedent is *Root Refining Co., supra.* It is not only mandatory that "M. Thora Worrell" be "made whole"; *Albemarle Paper Co. v. Moody,* 422 U.S. 405 (1975), [t]he general rule is that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is measured."

This petition for writ of certiorari should be granted to re-establish the integrity of the judicial process.

CONCLULSION:

The record and evidence in this cause of action have proven petitioner's claims that Goorich practiced a fraud upon the Akron Court, when its attorney, Carr, knowingly filed false, fabricated and forged evidence into the Akron court, and knowingly and clandestinely filed the perjured deposition statements, (proven in the S.J. court records), of Goodrich's former employee, John J. Bell, into the record. J. Contie copied this "sworn testimony" as the court's judgment against petitioner, rejecting her "voluminious" *prima facie* evidence proving her race-gender discrimination charges, and upheld categorically by the Ohio Civil Rights Commission, 1977.

This Court's holding that even if the fraudulent material is not "basic" to a judgment, that it was "urged upon the court," constitutes a "fraud upon the court," and the resulting judgment must be devitalized. By ruling of this court, and followed by all other circuit courts, that "laches" cannot be applied when such fraud has been perpetrated upon the courts; nor, will a defense of *res*

judicata, the finality of judgments, notwithstanding. This record presents no legal facts to support any of the legal results. Each of the judgments conflicts with every holding of this Court, and every holding of every circuit court in this nation, as petitioner's both appellant's briefs and reply briefs, for both the Sixth and Ninth Circuits, and which neither panel was able to dispute to the contrary.

Where a federal judge interferes with the just and due administration of law by, in this case, writing and issuing federal court orders on "post-it" stickers, to protect Goodrich from the legal result of failing to answer complaints in the time permitted by law; by feigning the existence of a federal court order to suppress plaintiff's *prima facie* evidence of her charges against Goodrich of perjury, subornation, forged-fabricated evidence, and false deposition statements (perjury), by Goodrich's attorneys; by notifying plaintiff of the existence of a "signed" "Order" but in fact withholding a copy of a federal court order from a party; and by premising the dismissal of that party's civil action upon that nonexistent "order," with defendant's attorney participating in that deception -- those acts are classified by federal statute as "obstruction

of justice." Where a then-circuit judge, denies said party's right to a copy of that federal court "order," basing that denial on false and nonexistent legal facts, thereyby making his signed, filed "order" a false statement: Those acts are contrary to law. They constitute conspiracy to aid and abet the concealment that J. Williams' "order" does not exist. It was faked : Criminal conspiracy to deny petitioner her civil rights; criminal conspiracy to tamper with the administration of justice, and criminal conspiracy to conceal obstruction of justice. Therefore, not only did Goodrich and its Akron attorney commit a fraud upon the Akron Court, Goodrich and its San Francisco attorneys conspired to fake a federal court order to deny plaintiff the remedy of relief from the intital fraud.

This Court provides a remedy for such criminal acts, and where inferior courts resist following its precedents, that remedy comprises the devitalization of the Akron court judgment, through the "saving clause," of the 60(b)(6) statute. That remedy includes the guarantee that petitioner had a statutory standing to bring a civil action to remedy the fraudulent judgment born of Carr's

infection of the Akron court. That remedy comprises that the damages prayed for in petitioner's 60(b)(6) am.compl., be forthcoming, and that petitioner be "made whole" for the injuries inflicted upon her by Goodrich and the "officers of the court."

The findings of the S.J. court and the ninth circuit, on their face, are in conflict with federal statutes identified in petitioner's "Statutory Provisions," *supra*. Those findings comprise denials to petitioner to equal protection under the law either by refusing to implement the law, and their refusal to address petitioner's prayers for relief, and suppress criminal activity by these "officers of the court" to interfere with petitioner's Constitutional and civil rights. Further, a "reasonable person" on the street might justifiably conclude that the effort to deny petitioner due process and equal protection was not happenstance. Her herculean efforts in seeking this relief through the remedies provided by law were deliberately frustrated and denied by design: the criminal acts of both Goodrich's attorneys, and by the criminal conspiratorial acts of both clerks of courts, and the federal judiciary as severally named herein, to deny - with malice

aforethought - this petitioner's substantial rights, to inflict upon her and her children, unspeakable injury.

These chilling facts constitute "extraordinary circumstances," which heretofore gave issue to this Court's power to grant relief to *Hazel Atlas* from the Third Circuit judgment. Here *Worrell* , in circumstances equally chilling, prays this petition for *certiorari* should be granted, therefor.

Respectfully submitted.
this 21st day of April, 1989

M. Thora Worrell

M. Thora Worrell
P.O. Box 115
Palo Alto, CA 94301
415/727-4448

Counsel for Petitioner

APPENDIX

In the Court of Appeals for the Ninth Circuit

Case No. 86-2788

M. Thora WORRELL
Appellant
v.
BF GOODRICH CO.

On Appeal from the United States
District Court for the Northern
District of California
Spencer M.Williams, District Judge
Presiding. D.C. No.DV-86-2-233-SW

SKOPIL, CIRCUIT JUDGE

Appellant's motion to vacate the court's orde November 14, 1988 is DENIED. The clerk of the court is directed to close this case and to reject the filing of any additional motions by the appellant.

FILED DEC. 15, 1988, Cathy A. Catterson, Clerk. U.S. Court of Appeals.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

M. THORA WORRELL,
Plaintiff-Appellant,
v.
B.F. GOODRICH COMPANY,
Defendant-Appellee.

No. 86-2788
D.C. No.
CV-86-20233-SW
OPINION

Appeal from the United States District Court
for the Northern District of California
Spencer M. Williams, District Judge, Presiding

Submitted February 26, 1988*

Filed April 27, 1988

Before: Otto R. Skopil, Jr., Mary M. Schroeder and
Arthur L. Alarcon, Circuit Judges.

Opinion by Judge Skopil

SUMMARY

Courts and Procedure

Appeal from order not granting a default judgment. The court affirmed holding that service of process by mail commences on the date of acknowledgment.

*The panel finds this case appropriate for submission without oral argument pursuant to Ninth Circuit Rule 34-4 and Fed. R. App. P. 34(a).

Appellant Worrell mailed to appellee Goodrich's Co's attorney a complaint and summons, with a notice and acknowledgment of service. The attorney signed the acknowledgment and mailed it back to Worrell within the twenty days specified. Worrell thereafter twice sought default judgments, claiming that Goodrich failed to file a responsive pleadings to her complaint within the twenty-day period. She contends that RAule 12(a)'s twenty day response period begins on the date of receipt of the complaint and summons.

[1] Process by mail and acknowledgment was adopted in 1983. Service failse unless the defendant returns the signed acknowledgment is timely returaned. [3] the twenty-day response period does not begin until the acknowledgment is made.

COUNSEL

M. THORA WORRELL, Pro Per, Palo Alto, California, for the plaintiff-appellant.

William Gaus, Pillsbury, Madison & Sutro, San Francisco, California, for the defendant-appellee.

OPINION

SKOPIL, CIRCUIT JUDGE:

Thora Worrell appeals pro se the district court's order dismissing her Fed.R.Civ.P.60(b) action. She contends the district court erred in not granting her request for a defvault judgment. We affirm.

DISCUSSION

Worrell commenced this aciton by filing an amended complaint seeking relief under Rule 60(b) from a 1978 judgment. Pursuant to Fed.R.Civ.P. 4(c)(2)(C)(ii), she sent a copy of the complaint and summons, with a notice and acknowledgment of service, by certified mail to Goodrich's attorney. The attorney signed the acknowledgment and mailed it back to Worrell within the twenty days specified by that rule.

Worrell thereafter twice sought default judgments, claiming that Goodrich failed to file a responsive pleading to her complaint within the twenty-day period provided b

Fed.R.Civ.P. 12(a). The clerk refused to enter default judgments since the twenty-day response time provided by Rule 12(a), when measured from the date Goodrich's attorney signed the acknowledgment, had not expired. Worrell contends that Rule 12(a)'s twenty-day response period begins on the date of receipt of the complaint and summons by counsel. Thus we must decide whether Goodrich's motion to dismiss, filed within twenty days of its acknowledgment of the complaint and summons, but well beyond twenty days from receipt of the complaint and summons, satisfied the response requirements of Rule 12(a).

[1] Process by mail and acknowledgment was adopted in 1983. Rule 4(c)(2)(C)(ii) provides that a plaintiff may serve a defendant by mail by sending copies of the complaint and summons, together with two copies of a notice and acknowledgment form. The rule plainly states that service fails unless the defendant returns the signed acknowledgment form. Virtually every court that has examined the rule has reached that same interpretation. E.g., Combs v. Nick Garin Trucking, 825 F.2d 437, 443 (D>C> Cir. 1987);Green v. Humpahrey Elevator and Truck

Co., 816 F.2d 877, 882 (CA3 1987); Guth v. Andersen, 118 F.R.D. 502, 504 (N.D.Cal. 1988); Southern Pride, Inc. v. Turbo Tek Enterprises, Inc. 117 F.R.D. 566, 569-70 (M.D.N.C. 1987). But see Morse v. Elmira County (sic) Club, 752 F.2d 35, 39 (CA2, 1984) (rule does not void a received-but-unacknowledged maail service).

[2] Effective mail service under Rule 4(c)(2)(C)(ii) athus depends on the cooperative response of the defendant. That result as one court noted, "was not adopted through inadvertence..." Coldwell Banker & Co. v. Eyde, 661 F. Supp. 657, 658 (N.D.Ill. 1986). Rather, Congress carefully structured the Rule to insure that default judgments would not be entered without proof of actual notice. See Id. at 658-59 & n.5 (examining legislative history). When the acknowledgment is timely returned, service is complete. When it is not returned, the rule provides that other methods of service must be employed. Id. at 658. Thus, even though the defendant receives actual notice by mail, there is no valid service unless the acknowledgment is timely returned. Armco, Inc. v. Penrod-Staufer Bldg. Systems, 733 F.2d 1087, 1089 (CA4 1984).

[3] That service is not deemed complete until the signed acknowledgment is timely returned supports a conclusion that the twenty-day response period provided by Rule 12(a) does not begin until the acknowledgment is made. The few courts that have considered this issue have reached this same conclusion. See, e.g., Blair v. Zimmerman, No.86-7037 (E.D. Pa. March 31, 1987)(available on WESTLAW, 1987 WL 8826]; Rust v. Kansas City, 107 F.R.D. 370, 371 (W.D. Mo. 1985); Madden v. Cleland, 105 F.R.D. 520, 525 (N.D. Ga. 1985). Moreover, this result is consistent with the several courts that have held the act of mailing a complaint and summons to a defendant does not constitute "service" for purposes of complying with Rule 4(j)'s 120-day limitation on service. See, e.g., Green, 816 F.2d at 879-81; Scarton v. Charles, 115 F.R.D. 567, 569 (E.D. Mich. 1987); Red Elk v. Stotts, 111 F.R.D. 87, 89 (D.Mont. 1986).

[4] Hence we hold that service of process is effective under Rule 4(c)(2)(C)(ii) on the date the acknowledgment is signed (if timely returned) and the twenty-day response time provided by Rule 12(a) commences on that date. Worrell's request for a default judgment was therefore

premature and properly denied by the court. See Rust, 107 F.R.D. at 371 (default judgment denied without prejudice when filed before expirateion of defendant's twenty-day response period measured from the date of acknowledgment of mailed service.)

AFFIRMED.

MEMEMORANDUM TO CLERK

I certify that the judges concerned concur in this order. Please file it. s/Anthony Kennedy
United States Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOCKETED

M. THORA WORRELL,
Petitioner

FILED
JUN 11 1987
Cathy A. Catterson
Clerk, U.S. Courr of Appeals

V

No. 86-7706
DC# CV-86-20233
N.California(San Jose)

UNITED STATES DISTRICT COURT
FOR THE N. DISTRICT OF CALIFORNIA
Respondent
and

ORDER

B.F. GOODRICH COMPANY
Real Party in InteresT

BEFORE: KENNEDY, ANDERSON AND CANBY, Circuit Judge

The petition for a writ of mandamus is denied. Petitioner had actual, timely notice of the September 12, 1986 order of continuance, and was not prejudiced by the clerk's failure to send her a written copy of the order.

MoCal 6/1/87

M. Thora Worrell
In propria persona
P.O. Box 902
Palo Alto, CA 94302-0902

ORIGINAL
FILED
OCT 27 1986
WILLIAM L. WHITTAKER
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

THE NORTHERN DISTRICT OF CALIFORNIA

M. Thora Worrell, Plaintiff	Civ.# 86-20233-SW
v.	
BF Goodrich Company, Defendant	Judge Spencer Williams

NOTICE OF APPEAL

Notice is hereby given that M. Thora Worrell, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Court's Order, filed, October 2, 1986, "GRANTING DEFENDANT'S MOTION TO DISMISS," and against the Plaintiff.

s/_____
M. Thora Worrell
In propria persona
P.O. Box 902
Palo Alto, CA 94302-0902

UNITED STATES DISTRICT COURT

THE NORTHERN DISTRICT OF CALIFORNIA

M. Thora Worrell,
Plaintiff

v.

BF Goodrich Company
Defendant

Civ. #86-20233-SW

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

B.F. Goodrich, for sex and race discrimination under Title VII, 42 U.S.C. Section 2000e in the District Court for the Northern District of Ohio in 1978. Judgment was entered for defendant B.F. Goodrich was affirmed by the Sixth Circuit, which later denied a petition for rehearing.

Seven years after judgment of the district court in Ohio and more than four years after the Supreme Court denied cert, plaintiff filed this action for relief from judgment under F.R.Civ.P. 60(b), claiming that defendant's attorney commited fraud on the court. Defendant brought this motion for dismissal, which came

this motion for dismissal, which came on for hearing Setpember 25, 1986.

TIMELINESS

Rule 60(b) requires that such motions be made "within a reasonable time." Here plaintiff has waited seven years from the time of discovering alleged fraud before filing her Rule 60(b) motion. Her voluminous papers mention that she wrote some letters to the Sixth Circuit Court of Appeals in 1982 and met with the FBI in 1983 to complain about alleged fraud upon the court, but plaintiff does not present any compelling reason why she failed to pursue her Rule 60(b) remedy before 1986. Therefore on grounds of timeliness as well as on other grounds explained below, defendant's motion to dismiss is hereby GRANTED.

There is a compelling interest in the finality of judgments which should not lightly be disregarded. Rodgers v. Watt, 722 F.2d 456 (9th Cir. 1983). Once final judgment has been entered, the record should be reopened under Rule 60 only under circumstances

which show that it is manifestly unconscionable that a judgment be giveneffect. Johnson Waste Materials v. Marshall, 611 F.2d 593, 597 (5th Cir. 1980).

Plaintiff has already raised the issue of fraud in her appeal to the Sixth Circuit. Thus this issue has already been litigated and is barred by the doctrine of res judicata.

For the above reasons, defendant's motion to dismiss is hereby GRANTED.

Dated: Oct. 2, 1986

s/ Spencer Willilams
U.S. District Court Judge.

NO.79-3619
UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

FILED
JUN 16 1981
John P. Heyman
Clerk

THORA WORRELL,
Plaintiff-Appellant,

ORDER

.v.

. GOODRICH COMPANY
. Defendant-Appellee

Before: LIVELY, KENNEDY, AND MARTIN,
CIRCUIT JUDGES.

Upon consideration of the petition for rehearing filed herein by plaintiff-appellant, the court concludes that the issue raised therein were fully considered upon the original submission and decision of this case.

IT IS THEREFORE ORDERED that the petition for rehearing be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk.

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NO. 79-3619

Thora Worrell,
Plaintiff-Appellant

v.

BF Goodrich Company,
Defendant-Appellee

ORDER
FILED
MAY 5, 1981
Court of Appeals
for the Sixth Circuit

Before: LIVELY, KENNEDY, and MARTIN, Circuit Judges.

Thora Worrell brought this action in the District Court under Title VII of the Civil Rights Act 1964, 42 USC Secs. 2000-e, alleging that Goodrich discriminated against her because of her race and her sex. Following a bench trial, the District Judge found that Worrell failed to establish a prima facie case of racial or sex discrimination, and entered judgment for defendant.

Appellant's lengthy brief essentially makes only one argument - that the District Court's conclusion that the evidence failed to show discrimination was clearly erroneous. This court may not set aside a district

Court's finding of fact unless it is clearly erroneous. Rule 52(a), Federla Rule of Civil Procedure.

Our review of the trial court's factual finding is limited because of appellant's failure to comply with the Federal Rules of Appellate Procedure. Appellant filed only a small portion of the trial transcript, and failed to notify appellee that less than the complete transcript had been ordered, as required by Federal Rule of Appellate Procedure 10(b).

We note that we are authorized in these circumstances to dismiss the appeal. United States v. One Motor Yacht, 527 F.2d 1112 (1st Cir. 1975). However, we believe that the record provided sufficiently establishes that the findings of the trial court are not clearly erroneous.

The judgment of the District Court is affirmed.

ENTERED BY ORDER OF THE COURT.

s/

John P. Hehman, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO EASTERN
DIVISION

Thora Worrell
Plaintiff

CIVIL Plaintiff

ACTION FILE
No. C-78-207

v.

BF. Goodrich Company
Defendant

This action came on for trial before the Court, Honroable Leroy J. Contie, Jr., United States District Judge presiding, and the issues having been duly tried and a decision having been duly rendered

It is Ordered and Adjudged that judgment is hereby entered for the defendants and against the plaintiff.

Dated at Akron, Ohio this 16the day of

May, 1979.

s/_____
Leroy J. Contie, Jr.
District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
Eastern Division

Thora Worrell
Plaintiff

Civ. No. C78-207A

v

MEMORANDUM

AND ORDER

BF GOODRICH COMPANY
Defendant

The plaintiff M. Thora Worrell initiated this action under Title VII of the Civil Rights Act of 1964, 42 USC Sec. 2000e-20000e-17, allegaing that her employer, the defendant B..F. Goodrich Company (Goodrich) discriminated against her because of her race and her sex. This Court has jurisdiction under 28 USC 1343. The Court duly heard testimony and received exhibits on November 20, 21, and 22, 1978. The following shall constitute the Court's findings of fact and conclusions of law as required by Rule 52 Federal Rules of Civil Procedure.

FACTS

. At the convention of the American Society of Information Specialists (ASIS) in October 1973, Worrell was interviewed by Dr. Marvin Frederichs (sic) of Goodrich. She later came to Brecksville, Ohio to meet with other Groodrich personnel. In January 1974 Worrell was offered and accepted a position with Goodrich at a salary of $20,000 per year

Worrell had been earning approximately $16,000 at her previsou job (plus $300 (sic) as a university lecturer). Worrell had sought a $25,000 salary from Goodrich. Worrell's supervison in Goodrich corporate communications department, John Bell, had expected to establish a public affairs researhch function at a more modest salary of $12,000 to $14,000 per year. Worrell seemd to be highly qualified, and she indicated she was entertaining other offers, so the position was made availabale at the higher salary.

To enable Worrell, who is a Canadian citizen, to make visa arrangements, and to permit her children to finish the school year, she did not start work at Goodrich

until June 1974. Worrell submitted receipts and was reimbursed for the expenses she incurred interviewing with the company, but she did not seek reimbursement for house hunting expenses. She was reimbursed for moving expenses.

During her first year at Goodrich, Worrell never received a formal performance evaluation from her supervisor John Bell. Bell did not formally evaluate any of his employees during that period because the department was in flux and he felt it would not be fair to them, or to him. At Goodrich performance evaluations were carefully distinguished from the review which accompanied merit increases in salary.

To ensure. a consistent salary policy and equitable salary increases throughout the corporation, Goodrich "levelled" all jobs. The personnel department would evaluate the duties and responsibilities associated with each position and assign it to a numerical level. Each level had an assigned salary range, and salary increases had to be within a prescribed range. The supervisor's discretion in salary decisions was circumscribed by the

the level assigned to the employee's position. Worrell and most of the employees in the corporate communications department were carried TBL: to be levelled. Becaause the department was still being structured, it was difficult to determine precise job descriptions for levlling purposes. At one point the personnel department tentatively levelled Worrell's position, but the level assigned would have resulted in a salary reduction, and Bell continued to carry Worrell TBL. By December 1974 Worrell had set up severl rooms she called the Public Affairs Research Center. She thought the public affairs research function was fully established and operational. Jon Bell, who had conceived the function Worrell was to perform, believed only a small part of the task had been accomplished. Worrell had accumulated athe resources to monitor social, economic, and political atrends, but she was not monitoring, analyzing, and reporting the trends. Worrell performed specific research tasks on demand, but that was only a small part of her function as Bell saw it.

The misunderstanding about Worrell's function was starkly presented when Goodrich faced a massive public relations problem concerning the effects of vinyl chloride. Bell turned to Worrell for information about which government agencies were likelyl to investigate the problem and what the basis of their inquiry would be. He foundhowever, that he had to go to outside consultants for the information which he expected to generalte internally.

Bell left Goodrich in May 1975. Foster Smith took over the corporate communications department and found he had the same problem explaining to Worrell the function he expected her to perform. Smith had to reduce the staff of the department by five people. He did not see the need for a public affairs research function as Bell had conceived it, but Smith tried to use Worrell's abilities within the department.

As part of his reorganization Smith brought in George Snider to be the director of editorial services.

Worrell and three other persons in his department put under Snider's supervision. Worrell saw the change dimunition of her managerial status. With Snider's arrival in January 1977,a the dialogue between Worrell and Smith concerning her function in the department became a three-way discussion between Worrell, Smith and Snider.

In January 1977 Foster Smith solicited input for the annual department plan from department personnel. Snider asked the people he supervised to provide him with a statement of their objectives and their plans for realizing them. Karas and Panyard, who like Worrell reported to Snider, did so within ten days. Despite the continuous discussion concerning her role in the department and the function she was to fill, Worrell responded that she could not comply with the request without more information.

Wanting a written description to clarify Worrell's work priorities, Snider prepared a description of the Public Affairs Research Center and submitted it for Worrell's comments and revision. Worrell received Snider's description on February 23. On March 2, sent a

memorandum to Worrell asking, inter alia, when he expect a response to the description of February . Late in the afternoon on March 2, Worrell responded to Snider's description by giving Smith a memorandum dated February 28. A copy was sent to Snider.

. Smith read Worrell's memorandum in the morning of March 3, and immediately made the decision to terminate her. He had tried to create a job for Worrell in corporate communications even though he saw no need for the function as Bell had conceived it. For several years he, and more recently Snider, had been talkaing to Worrell trying to accommodate her capabilities and their needs. Placing Worrell's memorandum of February 28 against athis historical backdrop, Smith knew when he read it that Worreli was unable to work within the corporate communications department and was unwilling to fill the public affairs research function as Smith and Snider defined it. Smith found Worrell's memorandum insubordinate, and did not want her in the department any longer than necessary because he felt her continued presence would be disruptive.

Smith conferred with a number of people on March 3 concerning his decision to terminate Worrell. First, he spoke with Snider. Because Worrell is a black female, Smith also spoke with F. Terrence Flannery who was in charge of equal employment opportunity (EEO) at Goodrich. Flannery was at Goodrich plant in Pennsylvania, but the decision was discussed with him on the phone.

On March 4, Smith met with Worrell and told her she was terminated. That same day the Ohio Civil Rights Commission (OCRC) called the EEO office at Goodrich to tell them Worrell had filed a charge of discrimination agqainst the company on February 28. Walter Blount took the OCRC call just as he was leaving for lunch. Blount had spoken to Flannery on the phone the day before, and Flannery had mentioned that Worrell was to be terminated. When Blount spoke with the OCRC he knew that Flannery would be in later that afternoon. Blount told Flannery about the OCRC charge as soon as Ïlanner returned to the office. Flannery in turn called Smith and learned that Worrell had already been terminated.

Beginning in 1975, and more urgently in 1976, Worrell sought immigration assistance from Goodrich. Worrell's eldest child reached the age of majority in 1976 and lost the protection of her mother's immigration status. The immigration quotas for the western hemisphere caused delay and Worrell's daughter faced deportation. Finally, a change in the law resolved the problem.

Worrell filed a charge of discrimination with the Equal Employment Opportunity Commmission on March 9, 1977 after her discharge. Worrell received a right to sue letter on May 8, 1978 and she filed this action on May 19, 1976.

DISCUSSION & CONCLUSIONS OF LAW

A plaintiff suing under Title VII must carry the initial burden of establishing a *prima facie* case of racial discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Worrell has not sustained this burden.

was not levelled. Bell gave no one an evaluation. The evidence showed that had Worrel's position been levelled, her salary would have been reduced.

Worrell has a number of complaints concerning her salary. She believes that in early discussions with Goodrich she was promised a salary of $25,000 and that Bell reneged and in the end only made the $20,000 offer. The fact remains that Worrell accepted the $20,000 offer. Plaintiff claims that her salary was to be raised $5,000, when the public affairs research function was operational. The Court finds no such promise was made. Worrell's testimony on this point, and on many others, is simply not credible. She was told that if she performed well she could expect periodic raises under the Goodrich merit increase policy.1/ Even if such[1] a promise had

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[1] There were also occasional suggestions at trial that Worrell thought her job with Goodrich was permanent – permanent in the sense that she could not be terminated. The Court finds that Goodrich gave Worrell a job that was permanent as opposed to temporary, but that Goodrich always reserved the right to terminate her for cause.

The "facts," in J. Contie's Judgment, re:

> Jackson v. City of Akron, Ohio; 411 F.Supp.680, (DC, N.D.Ohio, 1976), where no deficiency in "legal scholarship," is anywhere apparent. His wholesale ignoring of plaintiff's Supreme Court precedents smacks of intellectual dishonesty, at the very least, when the record before him impeached every statement therein

Carr filed Bell's deposition clandestinely and furtively which provided

been made, Worrell never understood the job that Bell, and later Smith and Snider, expected her to perform; the public affairs research function was never operational. Worrell presented two exhibits that apparently show the salary increases received by some Goodrich employees. The documents were entirely without foundation. The Court does not know whether data is presented for all the employees. Moreover, a number of the employees seem to have had promotions during the time reflected on the sheets. The court does not see how those employees can be compared to Worrell who remained in the same position during her entire tenure with the company. Thus there is no basis for the Court to find that Worrell's salary or the raises she received were discriminatiory.2

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the vehicle-method of which J. Contie.must have been a willing participant. His judicial style is markedly different between *Worrell* and *Jackson. This Court's precedents are relbuked in Worrell, while they are adopted in Jackson.*

2/ Assuming arguendo that the figures concerning salary increases were a representative sample of employees with positions comparable to Worrell's, the figures do not show discrimination. Comparing males and females, the charts show the salary increases for the two groups were almost the same. Only one other black person appears on the charts, and his percent increase was above average. Worrell's salary increases were below average, but the phenomenon does not correlate with either race or sex.

Worrell presented evidence that shows that some new Goodrich employees were reimbursed for expenses when they came to the Akron area to find a house. Worrell did not submit receipts. This does not show discrimination.3/[3]

From the facts it is clear that Worrell was terminated before those responsible were aware that she had filed a charge with the OCRC. Therefore the discharge could not be retaliatory. There is nothing to suggest that race or sex was a factor in the determination to discharge Worrell.

There is nothing in the record to support Worrell's belief that Goodrich interfered with her efforts to keep her daughter in the United States. Nor is there any basis for the Court to determine that Goodrich gave other employees immigration assistance that was denied to Worrell.

3/

Worrell may have tried to show that reimbursement of such expenses was against company policy. One of plaintiff's exhibits seems to state the company policy concerning reimbursement of househunting expenses. Part of the exhibit is printed, and that portion says nothing about househunting expenses. Handwritten notes on the same page indicate that househunting expenses will not be reimbursed. The Court cannot rely on the handwritten remarks because it does not know who made the notes, why they were added, or when they were added.

Worrell has detailed a number of additional incidents to show she was treated unfairly. The Court has reviewed all the allegations and finds none* of the incidents will bear the interpretion. In sum, the the evidence presented fails to show any discrimination against plaintiff based either on her race or her sex.

Accordingly, judgment will be entered for the defendant and against the plaintiff.

IT IS SO ORDERED.

s/ LEROY J. CONTIE, JR.
DISTRICT JUDGE.

EXCERPTS FROM WORRELL AFFIDAVIT

In Support of her "Answer to Def. Mot.Diss/Mot Sum.Judg," and her "Counter-Motion for Sum.Judg.," filed, September 4, 1986., in the San Jose Court), with documented proof substantiating Bell's statements are perjured., and that Goodrich's attorney, Carr, knew Bell made false statements in this deposition he filed, November 15, 1978, three days before trial. Notifying plaintiff would have provided the fair opportunity to rebut, with her preponderance of *prima facie* evidence.

Petitioner asks this Court to take judicial notice that "discovery" had ended, which foreclosed either party, without motion and leave of the court, to proceed.

The following is a brief excerpt from petitioner's 55-pp. affidavit, juxtaposing Bell's answers to petitioner's then- attorney's (Harland M. Britz) questions. Bell's 92-page deposition is filed, September 4, 1986, in the San Jose district court

record, as, plaintiff's exhibit, "Appendix C-1." The front page of this deposition was filed, as "Appendix, A-9.0," in the same record. These "matters other than the pleadings," (Rule 12(b)(6)), constituted evidentiary proof of Carr's fraud upon an acquiescent and cooperative Akron court: J. Contie, Jr. They later became J. Williams' objects of exclusion and of suppression in the San Jose Court, to protect Goodrich from devitalization of that judgment they procured by illegal means, and to conspire with Goodrich's attorneys to "fake" the "Order for Continuance," to obstruct justice, respectively.[4]

Abbrev.: I. 149, par.3. - "Appendix, [App. 6.1]"
II. 287-298 - "Appendix, [App.6.2,pp.287-298]

[4] **Bell Deposition,** p.50, 7-1
"Yes, again, there is a continuum here of activities. It was quite clear in a numbr of episodes like a very serious problem involving VINYl CHLORIDE that in various meetings we were depending increasingly on OUTSIDE SOURCES for information because we could n't get it couldn't get it soon

Akron Court Jdgmt I.150, Par.3.
"The misunderstanding about Worrell's function was starkly presented when Goodrich FACED a MASSIVE public relations problem concerning the effects of VINYL CHLORIDE.
I.151, PAR. 1
"He (Bell) found, however, that he had to go to OUTSIDE CONSULTANTS.

Bell's "Annual Report, 1975," p.289, [App, 6.2, p.289, S.J. Record, verifies Bell's perjury." Presentation to this Court of this entire comparison was foreclosed to petitioner, when her "Appendices, I, II, & IIa" were rejected by the Clerk's deputy. Petitioner filed her "Notice of Appeal to the United States Supreme Court, ...," with the Clerk of the Ninth Circuit Court of Appeals, January 14, 1989, to prepare for transmission to thia Court, those documents in the San Jose Record, which prove the above statements. That Record was shipped to Federal Archives, April 07, 1988,. Their return upon petitioner's motions, was "denied," twice, by Judge Otto Skopil, 28 USC Sec. 457, notwithstanding.

M. Thora Worrell

April 21, 1989.

M. Thora Worrell

Supreme Court, U.S.
FILED
MAY 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1760

In the Supreme Court of the United States

October Term, 1988

M. THORA WORRELL,
Petitioner,

vs.

THE B.F.GOODRICH COMPANY,
a corporation,
Respondent.

On Petition For a Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT REQUIRED BY SUPREME COURT RULE 28.1

Respondent The B.F.Goodrich Company has no parent company. In addition to wholly owned subsidiaries, respondent has ownership interests, either directly or through wholly owned subsidiaries, in B.F.Goodrich Chemical d Venezuela C.A. and Japan Power Brake, Inc.

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PRELIMINARY STATEMENT

The petition is untimely. The Court of Appeals denied rehearing on May 26, 1988, and the time for filing a petition for writ of certiorari expired ninety days later, on August 24, 1988.

The petition was not filed until March 15, 1989.

In any event, the decision of the Court of Appeals was correct. The twenty-day response time provided by Rule 12(a) commences when service of process is effective under Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure--that is, on the date the acknowledgment is served. Respondent timely filed its motion to dismiss in the district court, and the district court properly denied petitioner's request for entry of a default judgment.

Petitioner did not raise before the Court of Appeals the numerous other issues that petitioner attempts to raise in her petition. None of those issues are appropriate for review by this Court.

STATEMENT OF THE CASE

Petitioner M. Thora Worrell filed an action alleging sex and race discrimination under Title VII, 42 U.S.C. § 2000e, in the United States District Court for the Northern District of Ohio on May 19, 1978 (Clerk's Record on Appeal (9th Cir.) (hereinafter "CR"), item 8, p. 2). Judgment was entered for B.F.Goodrich on May 16, 1979 (CR 8, p. 2). The United States Court of Appeals for the Sixth Circuit affirmed the district court's decision on May 5, 1981, and plaintiff's petition for rehearing was denied on June 16, 1981 (CR 8, p. 2). This Court denied certiorari on November 2, 1981 (CR 8, p. 2; Worrell v. B. F. Goodrich Co., 454 U.S. 969 (1981), and on January 18, 1982, this Court denied petitioner's

motion for leave to file a petition for rehearing (CR 8, p. 2).

On May 8, 1986, petitioner filed an "amended complaint" for relief from judgment in the United States Court for the Northern District of California, asserting fraud (CR 8). Petitioner mailed the amended complaint to respondent on May 27, 1986, pursuant to Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure (Appellant's Brief (9th Cir.) July 21, 1987, p. 4).

Respondent signed an Acknowledgement of Receipt of Summons and Complaint on June 13, 1986 (CR 14) and mailed that form to petitioner. Petitioner received the acknowledgment on June 14 and filed it with the district court on June 16, 1986 (CR 15).

On July 3, 1986, respondent filed a motion to dismiss or, in the alternative, motion for summary judgment (CR 19, 20). The district court granted respondent's motion to dismiss (CR 56). The district court ruled that petitioner had raised the issue of fraud in her appeal to the Sixth Circuit and, therefore, her claim of fraud in the instant action was barred by res judicata (Pet.Appx., pp. A-12 to A-13). In addition, the district court ruled that petitioner had waited seven years from the "discovery" of the alleged fraud and dismissed plaintiff's action as untimely (Pet.Appx., p. A-12).

In the meantime, petitioner had twice sought default judgments, claiming that respondent had failed to file its responsive pleading to her complaint

(i.e., its motion to dismiss) within the twenty-day period provided by Rule 12(a) of the Federal Rules of Civil Procedure (Pet.Appx., pp. A-4 to A-5). The district court clerk refused to enter default judgments, since the twenty-day response time provided by Rule 12(a), when measured from the date respondent's attorney signed the acknowledgment, had not expired (Pet.Appx., p. A-5).

Petitioner appealed, arguing only that the district court clerk should have entered a default judgment against respondent. The Court of Appeals affirmed (845 F.2d 840), holding that "service of process is effective under Rule 4(c)(2)(C)(ii) on the date the acknowledgment is signed (if timely returned) and the twenty-day response time provided by Rule 12(a) commences on

that date" (Pet.Appx., p. A-7). The Court of Appeals concluded that petitioner's "request for a default judgment was therefore premature and properly denied by the court" (Pet.Appx., pp. A-7 to A-8). On May 26, 1988, the Court of Appeals denied a petition for rehearing (Order (9th Cir.), May 26, 1988; Appendix hereto, p. 1).

ARGUMENT

I. THE PETITION IS UNTIMELY.

The petition is untimely. Rule 20.4 of this Court provides that "if a petition for rehearing is timely filed by any party in the case, the time for filing the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the

date of the denial of rehearing or of the entry of a subsequent judgment entered on rehearing" (Supreme Court Rules, Rule 20.4).

Here, the Court of Appeals denied rehearing on May 26, 1988 (Order (9th Cir.), May 26, 1988; Appendix hereto, p. 1). Therefore, the petition for writ of certiorari was due ninety days from May 26, 1988--that is, on August 24, 1988. In fact, the petition was not filed with this Court[1] until March 15, 1989.[2] The petition was filed

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1 Petitioner attempted to file with the Court of Appeals a "Notice of Appeal to the United States Supreme Court for Writ of Certiorari" on January 14, 1989.

2 As noted by petitioner, the petition was initially returned to petitioner by the clerk of this Court and resubmitted by petitioner on April 22, 1989 (Pet., p. 16).

more than six months after the time for filing had expired.[3]

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3 Following the May 26, 1988 denial of rehearing, petitioner filed a number of collateral motions in the Court of Appeals. The Court of Appeals denied all such motions -- for example, on November 14, 1988 denying a motion for reconsideration of orders denying recall of mandate and recusal of the panel (Appendix hereto, p. 2) and on December 15, 1988 denying a motion to vacate the November 14, 1988 order (Appendix hereto, pp. 3-4). Neither order affected the time within which to apply for certiorari (Dept. of Banking v. Pink, 317 U.S. 264, 266 (1942) ("Unlike a motion for reargument or rehearing, it did not seek to have the Court of Appeals reconsider any question decided in the case")).

II. IN ANY EVENT, RESPONDENT TIMELY FILED ITS MOTION TO DISMISS IN THE DISTRICT COURT, AND THE DISTRICT COURT PROPERLY DENIED PETITIONER'S REQUEST FOR ENTRY OF A DEFAULT JUDGMENT.

In any event, the decision of the Court of Appeals was correct. Respondent filed its responsive pleading in the district court within the twenty-day time period under Rule 12(a) of the Federal Rules of Civil Procedure. Petitioner had mailed the summons and amended complaint to petitioner by certified mail. Respondent signed the acknowledgment of receipt and timely returned that form to petitioner. Thereafter, respondent filed a motion to dismiss within twenty days from the date the acknowledgment form was executed.

The Court of Appeals correctly held that the twenty-day response time provided by Rule 12(a) commences when service of process is effective under Rule 4(c)(2)(C)(ii)--that is, on the date the acknowledgment is signed (Pet.Appx., p. A-7).[4] The service under Rule

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4 Rule 4(c)(2)(C)(ii) provides that a summons and complaint may be served

> "by mailing a copy of the summons and of the complaint (by first-class mail, postage pre-paid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made [by a person not a party or by the United States marshal]" (Fed.Rules Civ.Proc., Rule 4(c)(2)(C)(ii)).

4(c)(2)(C)(ii) is not deemed complete until the signed acknowledgment is timely returned; accordingly, the twenty-day response period under Rule 12(a) does not begin until the acknowledgment is made (Pet.Appx., p. A-7).[5] Every other court that has considered this issue has similarly concluded that the period for a defendant's answer or motion to dismiss is measured from the date the defendant executed the acknowledgment form (e.g., Rust v. Kansas City, 107 F.R.D. 370, 371 (N.D.Mo. 1985); Madden v. Cleland, 105 F.R.D. 520, 525 (N.D.Ga. 1985); Blair v. Zimmerman, No. 86-7037 (E.D.Pa.

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5 Petitioner's argument (Pet., pp. 38-48) fails to recognize that her attempt to serve by mail was not effective unless and until the acknowledgment of receipt form was executed.

Mar. 31, 1987), 1987 Westlaw 8826).[6] There is no need for review by this Court.

III. PETITIONER DID NOT RAISE ANY OTHER ISSUES BEFORE THE COURT OF APPEALS.

Petitioner did not raise any other issues before the Court of Appeals.

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6 Under plaintiff's interpretation of Rule 4(c)(2)(C)(ii), a defendant would be encouraged to refuse to sign the acknowledgment of receipt--thereby forcing the plaintiff to use alternative methods of service (Fed.Rules Civ.Proc., Rule 4(c)(2)(A) and (B)) and gaining additional time to respond to the complaint (Madden v. Cleland (N.D.Ga. 1985) 105 F.R.D. 520, 524 ("With that choice * * *, few parties would decide to sign the acknowledgement form")). Plaintiff's argument would frustrate the purpose of Rule 4(c)(2)(C)(ii), and has been universally rejected by the courts.

Petitioner's brief to the Court of Appeals focused exclusively on the issue of whether respondent had filed a timely motion to dismiss and whether the district court should have entered a default judgment (see Appellant's Brief (9th Cir.) July 21, 1987). According to petitioner, the "Question Presented" was "[w]hether the district court clerk may refuse to perform his ministerial and peremptory duty to enter default judgment against defendant * * *" (Appellant's Brief (9th Cir.) July 21, 1987, p. 2).

Petitioner did not raise before the Court of Appeals the numerous other issues that petitioner attempts to present in her petition. "Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them" (Adickes v.

Kress & Co., 398 U.S. 144, 147, n. 2 (1970); accord, Delta Airlines, Inc. v. August, 450 U.S. 346, 362 (1981)). There are no extraordinary issues requiring review by this Court.[7]

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7 The district court's opinion summarizes the reasons for dismissal of petitioner's claims (see Pet.Appx., pp. A-11 to A-13).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent

PILLSBURY, MADISON & SUTRO

Of Counsel

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

M. THORA WORRELL,	)	
	)	
Plaintiff/Appellant,	)	No. 86-2788
	)	
vs.	)	D.C. No.
	)	CV-86-20233-SW
B.F. GOODRICH COMPANY,	)	
	)	ORDER
Defendant/Appellee.	)	
	)	

On Appeal from the United States
District Court for the
Northern District of California
Spencer M. Williams,
District Judge, Presiding

Before: SKOPIL, SCHROEDER, and ALARCON,

Circuit Judges

Appellant's petition for rehearing is DENIED. Her motion to compel the district court to retrieve the record in this case is also DENIED.

[Filed May 26, 1988, Cathy A. Catterson, Clerk, U.S. Court of Appeals.]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

M. THORA WORRELL,	)	
	)	
Plaintiff/Appellant,	)	No. 86-2788
	)	
vs.	)	D.C. No.
	)	CV-86-20233-SW
B.F. GOODRICH COMPANY,	)	
	)	ORDER
Defendant/Appellee.	)	
	)	

On Appeal from the United States
District Court for the
Northern District of California
Spencer M. Williams,
District Judge, Presiding

SKOPIL, Circuit Judge

Appellant's "Motion of Inquiry," construed as a motion for reconsideration of the various orders denying recall of the mandate and recusal of the panel is DENIED.

[Filed Nov. 14, 1988, Cathy A. Catterson, Clerk, U.S. Court of Appeals.]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

M. THORA WORRELL,	)	
	)	
Plaintiff/Appellant,	)	No. 86-2788
	)	
vs.	)	D.C. No.
	)	CV-86-20233-SW
B.F. GOODRICH COMPANY,	)	
	)	ORDER
Defendant/Appellee.	)	
	)	

On Appeal from the United States
District Court for the
Northern District of California
Spencer M. Williams,
District Judge, Presiding

SKOPIL, Circuit Judge

Appellant's motion to vacate the court's order of November 14, 1988 is DENIED. The clerk of the court is directed to close this case and to reject

the filing of any additional motions by the appellant.

[Filed Dec. 15, 1988, Cathy A. Catterson, Clerk, U.S. Court of Appeals.]